IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10551 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHCHAND PYARCHAND CHAVALA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

#. District Magistrate, Surat, passed an order on December 24, 1999 in exercise of powers under Section 3 (2) of the Prevention of Blackmarketing & Maintenance of Supply of Essential Commodities Act, 1980 ("the PBM Act"

for short), detaining the detenue under the provisions of the PBM Act.

#. In the grounds of detention, it was observed by the detaining authority that the detenue who runs Rajkumar Petroleum Service at Ring Road, Surat, was indulged in malpractice relating to petrol and there was difference in stock to the extent of about 4609 litres of petrol. It was also found that some inferior quality of petroleum product was was used for being mixed with petrol. Considering the activities of the detenue, the detaining authority came to a conclusion that he was required to be detained under the PBM Act so that he can be immediately prevented from continuing his activities.

#. The detenue/petitioner challenges the order of detention by this petition under Article 226 of the Constitution of India on various grounds. However, Mr. Prajapati, learned advocate appearing for the petitioner has relied on the ground of delay caused in considering the representation made on behalf of the detenue by the Central Government. He has placed reliance on the affidavit-in-reply filed on behalf of the Union of India to substantiate his submissions. He submitted that admittedly the representation dated 28th December, 1999 was received by the Central Government on 5th January, 2000 along with parawise remarks from the State Government vide letter dated 3rd January, 2000. Another representation dated 28th December, 1999 was received through the District Magistrate on 6th December, 1999 and the same were decided on 18th January, 2000 (it must be January, 2000). Mr. Prajapati, therefore submitted that lapse of time between 6th January, 2000 and 18th January, 2000 is not explained by the Central Government. and therefore, it has resulted into the denial of right of the detenue of making an effective representation. The petition, may therefore, be allowed.

#. Mr. K.T.Dave, learned AGP, representing the State of Gujarat and the detaining authority and Ms. P.J.Davawala, learned Addl. Standing Counsel for the Union of India have opposed this petition.

#. Having regard to the rival side contentions, the question that requires to be addressed to by this Court is whether there is delay on the part of the Union of India in considering the representation made on behalf of the detenue, and if so, whether it is explained, and if yes, whether that explanation is acceptable?

#. There is no dispute about the fact that the first

representation dated 28th December, 1999 addressed to the State Government was forwarded by the State Government to the Central Government vide letter dated 3rd January, 2000, which was received by the Central Government on 5th January, 2000 and the second representation dated 28th December, 1999 addressed to the State Government was forwarded by the State Government to the Central Government which was received by the Central Government on 6th January, 2000. The Central Government considered the representations along with parawise remarks and rejected the representations on 18th January, 2000. Under no circumstances, it can be said that the lapse of a period between 5th January, 2000 to 18th January, 2000 is even attempted to be explained. Why the representation of the present detenue was not attended to immediately is not explained and therefore, this inordinate delay in considering the representation has resulted into infringement of right of the detenue of making an effective representation. The continued detention, therefore, would be vitiated and the petition, therefore, deserves tobe allowed.

#. This petition is allowed. The impugned order of detention dated December 24, 1999 is hereby quashed and set aside. The detenue - Sureshchandra Pyarchand Chavala, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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